



Attorney General

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Robert K. Corbin

June 6, 1989

Mr. Samuel Lewis, Director
Arizona Department of Corrections
1601 West Jefferson
Phoenix, Arizona 85007

Re: I89-045 (R87-154)

Dear Mr. Lewis:

You have asked whether A.R.S. § 31-233(I) applies to offenders who have been convicted of a felony subsequent to the convictions for which they are currently confined. Our opinion is that the statute applies to all who have been convicted of more than one felony, regardless of the sequence of the convictions.

A.R.S. § 31-233(I) provides:

At any given time that there is a shortage of beds available for inmates within the state department of corrections, the parole eligibility as set forth in §§ 33-411 and 41-1604.06 may be suspended for any inmate not previously convicted of a felony who has been sentenced for a class 4, 5 or 6-felony, not involving the use or exhibition of a deadly weapon or dangerous instrument or the infliction of serious physical injury pursuant to § 13-604, and such inmate shall be continuously eligible for parole.

In answering your request, we must interpret the meaning of the term "previously convicted" as it is used in the statute. It is our opinion that an inmate has been "previously convicted of a felony" if the conviction occurred prior to the inmate's parole pursuant to A.R.S. § 31-233(I).

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We have reached our conclusion by examining the legislative intent behind § 31-233(I). A statute must be interpreted to accomplish the legislative intent and purpose of the statute. State ex rel. Flournoy v. Magnum et al, 113 Ariz. 151, 152, 548 P.2d 1148, 1149 (1976).

The legislative intent of § 31-233(I) is to relieve prison overcrowding by providing early parole to certain less serious felony offenders. Berry v. State Dep't of Corrections, 144 Ariz. 126, 127, 696 P.2d 216, 217 (App. 1985) [Interpreting A.R.S. § 31-233(G), the precursor to A.R.S. § 31-233(I)]. Permitting release under A.R.S. § 31-233(I) based upon the sequence of an offender's convictions would not accomplish the legislature's purpose in enacting this statute. The existence of additional convictions, not their sequence, is the factor that determines the offender's eligibility for parole under § 31-233(I).

Therefore, we conclude that A.R.S. § 31-233(I) applies to all offenders who have been convicted of multiple crimes, without regard to the sequence of the convictions.

Sincerely,



BOB CORBIN
Attorney General

BC/RMH/ms